

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GREGORY PAPADOPOULOS,

Plaintiff,

-against-

US GOVERNMENT (FBI); ALFONSO
“ALFY” FANJUL; JOSE “PEPE” FANJUL,

Defendants.

19-CV-4597 (LLS)

ORDER

LOUIS L. STANTON, United States District Judge:

On May 17, 2019, Plaintiff, who is barred from filing any new action *in forma pauperis* (IFP) without first obtaining from the Court leave to file, *see Papadopoulos v. Mineeva*, No. 10 Civ. 4882 (S.D.N.Y. Feb. 8, 2011), filed a letter addressed to Chief Judge Colleen McMahon, seeking permission to file a new action. On May 22, 2019, the Court denied Plaintiff’s request for leave to file this new action IFP, because the new action is not a departure from Plaintiff’s pattern of frivolous litigation. On June 5, 2019, Plaintiff filed a “Motion for Reconsideration Pursuant [sic] to Rule 59e and 60b,” challenging the Court’s May 22, 2019 order.

The Court liberally construes this submission as a motion under Fed. R. Civ. P. 59(e) to alter or amend judgment and a motion under Local Civil Rule 6.3 for reconsideration, and, in the alternative, as a motion under Fed. R. Civ. P. 60(b) for relief from a judgment or order. *See Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006); *see also Tracy v. Freshwater*, 623 F.3d 90, 101 (2d Cir. 2010) (The solicitude afforded to *pro se* litigants takes a variety of forms, including liberal construction of papers, “relaxation of the limitations on the amendment of pleadings,” leniency in the enforcement of other procedural rules, and “deliberate, continuing efforts to ensure that a *pro se* litigant understands what is required of him”) (citations omitted). After reviewing the arguments in Plaintiff’s submission, the Court denies the motion.

DISCUSSION

The standards governing Fed. R. Civ. P. 59(e) and Local Civil Rule 6.3 are the same. *R.F.M.A.S., Inc. v. Mimi So*, 640 F. Supp. 2d 506, 509 (S.D.N.Y. 2009). The movant must demonstrate that the Court overlooked “controlling law or factual matters” that had been previously put before it. *Id.* at 509 (discussion in the context of both Local Civil Rule 6.3 and Fed. R. Civ. P. 59(e)); *see Padilla v. Maersk Line, Ltd.*, 636 F. Supp. 2d 256, 258-59 (S.D.N.Y. 2009). “Such motions must be narrowly construed and strictly applied in order to discourage litigants from making repetitive arguments on issues that have been thoroughly considered by the court.” *Range Road Music, Inc. v. Music Sales Corp.*, 90 F. Supp. 2d 390, 391-92 (S.D.N.Y. 2000); *see also SimplexGrinnell LP v. Integrated Sys. & Power, Inc.*, 642 F. Supp. 2d 206 (S.D.N.Y. 2009) (“A motion for reconsideration is not an invitation to parties to ‘treat the court’s initial decision as the opening of a dialogue in which that party may then use such a motion to advance new theories or adduce new evidence in response to the court’s ruling.’”) (internal quotation and citations omitted).

Plaintiff asserts that his case is about “25 years of relentless FBI-Fanjul Organized Crime Family Harassment,” which caused him to develop cancer. (Mot. at 1.) He asserts that there is nothing frivolous about cancer; that “some 13,400 cases have recently been filed around the country by people who have claimed to have developed cancer by using a herbicide ‘roundup,’ and that “[c]ases were filed against Bayer and its subsidiary Monsanto.” (*Id.*) Plaintiff takes the position that the Court never read or comprehended his submission because the word “cancer” does not appear in the Court’s May 29, 2019 order.

Plaintiff has failed to demonstrate in his motion that the Court overlooked any controlling decisions or factual matters with respect to the Court’s decision to deny Plaintiff permission to

file the new action. Plaintiff's motion under Fed. R. Civ. P. 59(e) and Local Civil Rule 6.3 is therefore denied.

Under Fed. R. Civ. P. 60(b), a party may seek relief from a district court's order or judgment for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason justifying relief.

Fed. R. Civ. P. 60(b).

Plaintiff seeks reconsideration because

[the] [d]evelopment of cancer is not a frivolous matter. Never a Judge in any other case, ever labeled claims due to cancer as frivolous." "Nor allegations of FBI-Gangster conspiracies could be labeled as frivolous after many were uncovered in the District of Massachusetts mainly between FBI agents and Whitey Bulger's gang.

(Mot. at 2.) He asserts that the Court's decision is

laconic and dogmatic. There is no analysis or discussion of any kind. The entire decision is mainly threats. Threatening and bullying someone who just developed cancer and comes to this court hoping to eradicate the cause of the disease would seem to be at the very least inhumane if not outright attempted murder.

(*Id.*)

The Court has considered Plaintiff's arguments, and even under a liberal interpretation of his motion, Plaintiff has failed to allege facts demonstrating that any of the grounds listed in the first five clauses of Fed. R. Civ. P. 60(b) apply. Therefore, the motion under any of these clauses is denied.

To the extent that Plaintiff seeks relief under Fed. R. Civ. P. 60(b)(6), the motion is also denied. “[A] Rule 60(b)(6) motion must be based upon some reason other than those stated in clauses (1)-(5).” *United Airlines, Inc. v. Brien*, 588 F.3d 158, 175 (2d Cir. 2009) (quoting *Smith v. Sec’y of HHS*, 776 F.2d 1330, 1333 (6th Cir. 1985)). A party moving under Rule 60(b)(6) cannot circumvent the one-year limitation applicable to claims under clauses (1)-(3) by invoking the residual clause (6) of Rule 60(b). *Id.* A Rule 60(b)(6) motion must show both that the motion was filed within a “reasonable time” and that “‘extraordinary circumstances’ [exist] to warrant relief.” *Old Republic Ins. Co. v. Pac. Fin. Servs. of America, Inc.*, 301 F.3d 54, 59 (2d Cir. 2002) (per curiam) (citation omitted). Plaintiff has failed to allege any facts demonstrating that extraordinary circumstances exist to warrant relief under Fed. R. Civ. P. 60(b)(6). *See Ackermann v. United States*, 340 U.S. 193, 199-202 (1950).

CONCLUSION

Accordingly, Plaintiff’s motion for reconsideration (ECF No. 7) is denied.

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

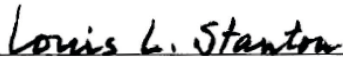
Plaintiff’s case in this Court under Docket No. 19-CV-4597 is closed. The Court will only accept for filing documents that are directed to the Second Circuit Court of Appeals. If Plaintiff files other documents that are frivolous or meritless, the Court will direct Plaintiff to show cause why he should not be barred from filing further documents in this action.

The Clerk of Court is directed to docket this as a “written opinion” within the meaning of Section 205(a)(5) of the E-Government Act of 2002.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: June 17, 2019
New York, New York



Louis L. Stanton
U.S.D.J.